EDITOR'S NOTE: Changes noted in Erratum, dated March 6, 1985, have been incorporated into this text at page 85 IBLA 33

MAC A. STEVENS (ON RECONSIDERATION)

IBLA 84-507 Decided January 31, 1985

Appeal from the decision of the Anchorage District Office, Bureau of Land Management, declaring two placer mining claims null and void ab initio.

Affirmed; Mac A. Stevens, 83 IBLA 164 (1984) sustained.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Abandonment--Mining Claims: Lands Subject to--Mining Claims: Recordation--Mining Claims: Relocation--Mining Claims: Withdrawn Land

Where mining claims are located after October 21, 1976, a copy of the notices of location must be filed with the proper office of the Bureau of Land Management within 90 days after the dates of such locations, failing which, the claims must be deemed conclusively to have been abandoned. If, subsequently, the locator files new notices of location bearing a later date, that constitutes a relocation of the former claims, and the new claims date from such relocation. If in the interim between the abandonment of the original claims and the date of their relocation the land is withdrawn, the relocated claims are null and void ab initio.

Appearances: Mac A. Stevens, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

On February 20, 1979, Mac A. Stevens filed location notices for the Black Jack No. 1 and Black Jack No. 2 placer mining claims with the Anchorage District Office of the Bureau of Land Management (BLM). These were assigned numbers AA 24711 and AA 24712, respectively. The copies filed with BLM showed that the claims had been located on November 25, 1978 (86 days previous), and that they had been filed for record on February 20, 1979, in the Talkeetna Recording District at Book 69, Pages 445-448. Later BLM found that the land described in the location notices had been withdrawn from mineral entry and location on November 16 and 17, 1978, by Public Land Orders 5653 and 5654. Accordingly, by its decision dated March 14, 1984, BLM held that the claims were null and void ab initio, from which decision Stevens appealed to this Board.

In his statement of reasons for appeal, Stevens asserted only that be was unaware that the land had been withdrawn from appropriation under the mining law, and that he had regularly performed his annual assessment work at considerable expense. On October 15, 1984, by our decision styled Mac A. Stevens, 83 IBLA 164 (1984), this Board affirmed the BLM decision. The case records were then returned to BLM at Anchorage.

On January 7, 1985, this Board received a letter from Stevens with two attached notices of location for the Black Jack Nos. 1 and 2 claims. These notices showed that the claims had been located by Stevens and his associate, Nancy Trump, on July 24, 1978, and were recorded at the Talkeetna Recording District on August 29, 1978, at Book 67, Pages 713, 714. In his letter, Stevens states that because he located the claims prior to the withdrawals on November 16 and 17, he considered the claims as still valid.

The Board treated the letter and enclosed location notices as Stevens' petition for reconsideration of our decision, and recalled the case records from Alaska.

On our second review of those records it was immediately apparent that Stevens had never filed the earlier location notices with BLM, nor indicated to BLM or this Board that they existed, until after the appeal had been fully and finally decided.

No explanation has been offered by Stevens as to why he located these claims on July 24, 1978, and again on November 25, 1978, or why he failed to inform BLM or this Board that he had done so. However, it is apparent that the July location notices were never filed with BLM, as required by 43 U.S.C. § 1744 (1982). That statute provides:

> The owner of an unpatented * * * placer mining claim * * * located after October 21, 1976 shall, within ninety days after the date of location of such claim, file in the office of the Bureau designated by the Secretary a copy of the official record of the notice of location or certificate of location * * *.

The statute provides further that "The failure to file such instruments * * * shall be deemed conclusively to constitute an abandonment of the mining claims * * * by the owner * * *."

Accordingly, we conclude that the original locations of the Black Jack Nos. 1 and 2, accomplished by the July location notices, became abandoned and void as a matter of law after 90 days had elapsed, i.e., on October 23, 1978. Presumably Stevens realized the consequences of his failure to file the July notices with BLM and sought to rectify his error by relocating the claims on November 25, 1978, and filing those location notices with BLM within the prescribed period. This would have been the prudent and proper thing to do in those circumstances. Unfortunately, between the time the first location of the claims was nullified and the time their relocation was accomplished, the land was withdrawn from further mineral location.

The courts and this Board have consistently held that relocation establishes the rights, if any, of the claimant from the date of such relocation,

and does not relate back to or secure any of the rights which attached to the previous claim. See, e.g., R. Gail Tibbets, 43 IBLA 210, 86 I.D. 538 (1979), and cases collected therein. Speaking to the question of the distinction between amended locations and relocations an early decision noted, "A void thing is null, and not subject to amendment." McEvoy v. Hyman, 25 F. 596 (C.C.D. Colo. 1885).

Even were it not for the conclusive presumption of abandonment imposed by statute when Stevens failed to file his July location notices in accordance with sec. 1744, his relocation of those claims in November would have had the effect of nullifying the original locations. In another case, appellants had located claims in 1955, but in 1961 the land was sold by the United States to a third party and patented without a reservation of locatable minerals, and the appellants relocated the claims in 1976. There, the Board held:

> [W]hile the claim notices submitted by appellants indicate that the claims were located in 1955, the subsequent claim notices give rise to the assumption that the claims were relocated by appellants in 1976. If in fact that claims were relocated, the 1955 claims were abandoned at the time of relocation. The relocator has no rights by relation to the date and priority of the title which he has destroyed by his relocation. See Cheesman v. Shreeve, 40 F. 787 (C.C. Colo. 1889). Therefore, if a claimant has relocated a mining claim, the claimant has lost all rights to contest the validity of an intervening right based on the claimant's rights under the prior claim.

Henry J. Hudspeth, Sr., 78 IBLA 235, 236 (1984). That holding applies with equal force in the instant case.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, our decision styled Mac A. Stevens, 83 IBLA 164 (1984), is sustained, and the decision appealed from is reaffirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge